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18CV57149

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

ARROWOOD INDEMNITY COMPANY, a
Delaware Corporation, formerly known as ROYAL
INDEMNITY COMPANY, as successor in interest
to ROYAL GLOBE INSURANCE COMPANY,

Plaintiff,

v.

PACIFIC INDEMNITY COMPANY, a Wisconsin
corporation, as successor to all of the liabilities of
NORTHWESTERN PACIFIC INDEMNITY
COMPANY, an Oregon corporation, ALLSTATE
INSURANCE CORPORATION, an Illinois
corporation, HARTFORD ACCIDENT AND
INDEMNITY COMPANY, a Connecticut
corporation, FARMERS INSURANCE COMPANY
OF OREGON, an Oregon corporation,
EMPLOYERS INSURANCE COMPANY OF
WAUSAU, a Wisconsin corporation, and
LUMBERMENS MUTUAL GROUP, an Illinois
corporation, as successor to all of the liabilities of
KEMPER and KEMPER INSURANCE
COMPANIES, Illinois corporations;

Defendants.

Case No.

**COMPLAINT FOR
DECLARATORY RELIEF**

**CASE NOT SUBJECT TO
MANDATORY ARBITRATION**

Fee authority: ORS 21.135(1);2(f)

NATURE OF ACTION

1.

This is an action for declaratory relief, arising out of the currently-pending case of *State of Oregon v. Pacific Indemnity Company, et al.*, ¹ Multnomah County Circuit Court Case No.

¹ The underlying case has been designated as complex and assigned to Judge Karin Immergut for all proceedings.

1 15CV29585. In the instant action, Plaintiff Arrowood Indemnity Company, formerly known as
 2 Royal Indemnity Company, and as successor in interest to Royal Globe Insurance Company
 3 (“Arrowood”) seeks a declaration that the “Defendant Insurers” (all defendants named herein)
 4 owe contribution to Arrowood for their just and equitable share of the common liability relating
 5 to the defense of the State of Oregon (“the State”), by and through its Department of
 6 Transportation (“ODOT”) against claims, demands, suits and proceedings asserted by the United
 7 States Environmental Protection Agency (“EPA”), the Portland Harbor Natural Resource Trustee
 8 Council, and others for response costs and damages arising from alleged groundwater, surface
 9 water, soil, and sediment contamination in connection with the Portland Harbor Superfund
 10 matters (the “Portland Harbor Claims”).

11 JURISDICTION AND VENUE

12 2.

13 This court has jurisdiction over the Defendant Insurers for one or more of the following
 14 reasons:

- 15 a. The Defendant Insurers were or are licensed or authorized to do business in the
 16 State of Oregon;
- 17 b. The Defendant Insurers have, within the relevant time periods, transacted the
 18 business of selling insurance and adjusting claims in the State of Oregon; and
- 19 c. The Defendant Insurers have sold insurance policies which cover risks located
 20 within the State of Oregon, assumed all of the liabilities arising from policies
 21 sold in Oregon to the State of Oregon, or issued policies under which ODOT
 22 and/or the State of Oregon qualify as named or additional insureds.

23 3.

24 This court has jurisdiction over the subject matter of this action pursuant to ORS 14.030
 25 and ORS 28.020.

26 ///

1 4.

2 Venue lies with this court under ORS 14.080 because the events giving rise to the dispute
3 occurred in Multnomah County, Oregon, and Farmers Insurance Company of Oregon (the only
4 defendant domiciled in Oregon) conducts regular and sustained business activity in Multnomah
5 County.

6 **PARTIES**

7 5.

8 Plaintiff Arrowood is an insurance company incorporated in Delaware with its principal
9 place of business in North Carolina and was formerly known as Royal Indemnity Company,
10 which is the successor in interest to Royal Globe Insurance Company.

11 6.

12 Northwestern Pacific Indemnity Company (“NWPI”) was incorporated under the laws of
13 the State of Oregon on February 14, 1963. The original Certificate of Authority was issued by
14 the Oregon Insurance Division on March 1, 1963. NWPI was a member of The Chubb
15 Corporation holding company system and was a wholly owned subsidiary of PIC, a property and
16 casualty insurer domiciled in Wisconsin. As a result of a *Transfer and Assumption Agreement*
17 between PIC and Cottage Insurance Holdings, Inc., PIC accepted and assumed all liabilities of
18 any kind of NWPI, including all liabilities relating to or arising from policies issued prior to
19 February 12, 2013. Federal Insurance Company, an Indiana domiciled insurer, in turn owns PIC.
20 The Chubb Corporation, a New Jersey domiciled holding corporation, owns Federal Insurance
21 Company.

22 7.

23 Employers Insurance Company of Wausau (“Wausau”) is an insurance company
24 incorporated in, and which maintains its principal place of business in, Wisconsin.

25 8.

26 Allstate Insurance Company (“Allstate”) is an insurance company incorporated in, and

1 which maintains its principal place of business in, Illinois.

2 9.

3 Hartford Accident and Indemnity Company (“Hartford”) is an insurance company
4 incorporated in, and which maintains its principal place of business in, Connecticut.

5 10.

6 Lumbermens Mutual Group (“Lumbermens”) is an insurance company incorporated in,
7 and which maintains its principal place of business in, Illinois. The company and its affiliates
8 formerly operated under the trade names “Kemper” and “Kemper Insurance Companies”, which
9 were insurance companies incorporated in, and with their principal places of business in, Illinois.

10 11.

11 Farmers Insurance Company of Oregon (“Farmers”) is an insurance company
12 incorporated in, and which maintains its principal place of business in, Oregon and which
13 conducts regular and sustained business activity in Multnomah County, Oregon.

14 **INSURANCE POLICIES**

15 12.

16 Arrowood, through its predecessor, Royal Globe Insurance Company, issued the
17 following contract of insurance to Northwest Copper Works, Inc., under which ODOT claimed it
18 was an additional insured under the automobile coverage part: Policy No. PYA125691 effective
19 for the policy period of March 17, 1978 to March 17, 1981, with limits of \$500,000 per
20 occurrence and \$500,000 in the aggregate.

21 13.

22 NWPI issued the following contracts of insurance – which include automobile coverage –
23 to the State, including its departments and agencies, under which ODOT is an insured, and all
24 liability and obligations for which PIC has assumed:

- 25 a. Policy No. L010053 with limits of \$300,000 per occurrence and no aggregate
26 limit of liability, and effective for the original policy period of July 1, 1968 to July

1, 1971, but extended by the following endorsements for five additional policy periods up through and including October 1, 1973:

i. Endorsement #20 - a new policy period through and including September 30, 1971;

ii. Endorsement #21 - a new policy period through and including November 30, 1971;

iii. Endorsement #22 - a new policy period through and including June 30, 1972;

iv. Endorsement #23 - a new policy period through and including June 30, 1973; and

v. Endorsement #33 - a new policy period through and including October 1, 1973.

b. Policy No. L0077806600 with limits of \$300,000 per occurrence and no aggregate limit of liability, and effective for the policy period of October 1, 1973 to October 1, 1976, but unilaterally cancelled by NWPI over the State's objection effective October 1, 1975.

c. Policy No. LAC 5784 with limits of \$300,000 per occurrence and no aggregate limit of liability and effective for the policy period of July 1, 1970 to July 1, 1971.

d. Policy No LAC 6200 with limits of \$300,000 per occurrence and no aggregate limit of liability and effective for the policy period of July 1, 1971 to July 1, 1974.

14.

Farmers issued the following contract of insurance, which includes automobile coverage, directly to the State of Oregon: Policy No. 3120-00-24 with limits of \$100,000 per occurrence and \$300,000 aggregate and effective for the period of July 1, 1974 to July 1,

1 1977.

2 15.

3 Hartford issued the following contracts of insurance, which include automobile
4 coverage, to Warren Pacific Corporation pursuant to which ODOT qualifies as an
5 additional insured:

6 a. Primary policy number 52CBPHN9383 effective for the policy period of
7 August 1, 1983 to August 1, 1984, with limits of \$500,000 per occurrence
8 and \$500,000 in the aggregate for property damage; and

9 b. Umbrella policy number 52 RHU HN8726 effective for the policy
10 period of August 1, 1983 to August 1, 1984, with limits of \$5,000,000 per
11 occurrence and \$5,000,000 in the aggregate for property damage.

12 16.

13 Allstate issued the following contract of insurance, which includes automobile
14 coverage, directly to ODOT: Primary policy number 17-905-049CG effective for the policy
15 period of August 21, 1965 to August 21, 1968, with limits of \$100,000 per occurrence and no
16 aggregate limits of liability.

17 Allstate issued the following contracts of insurance, which include automobile
18 coverage, directly to the State of Oregon:

19 a. Primary policy number 17-910-440-7-1 effective for the policy period of
20 July 1, 1967 to July 1, 1968, with property damage liability limits of \$25,000
21 per occurrence and no aggregate limits of liability;

22 b. Primary policy number 17-913-550-7-1 effective for the policy period of
23 July 1, 1968 to July 1, 1969, with property damage liability limits of \$25,000 per
24 occurrence and no aggregate limits of liability.

25 c. Primary policy number 17-919-400 effective for the policy period of July
26 1, 1969 to July 1, 1970, with property damage liability limits of \$25,000 per

1 occurrence and no aggregate limits of liability.

2 17.

3 Wausau issued the following contract of insurance, which includes automobile
4 coverage, to Donald M. Drake Company, pursuant to which ODOT qualifies as an additional
5 insured: Policy number 52-CBP-HN9383 effective for the policy period August 1, 1983 to
6 August 1, 1984, with property damage liability limits of \$250,000 per occurrence and no
7 aggregate limits of liability.

8 18.

9 Lumbermens, by and through Kemper or Kemper Insurance Companies, issued an
10 automobile insurance contract effective for the policy period of October 1, 1985 to October 1,
11 1986 to NW Copper Works, Inc. and, on information and belief, ODOT qualifies as an additional
12 insured under that insurance, which had a per occurrence limit of \$500,000.

13 COMMON ALLEGATIONS

14 19.

15 In December of 2000, EPA listed a section of the lower Willamette River near Portland,
16 Oregon on the National Priorities List as a federal Superfund Site (“the Portland Harbor”). The
17 study area for the Portland Harbor extends from river mile 1 up to and including through river
18 mile 12. In that same month, EPA also sent out nearly seventy (70) General Notice Letters
19 (“GNLs”) informing potentially responsible parties (“PRPs”) that they may be liable for money
20 expended by EPA for response actions in the Portland Harbor under the Comprehensive
21 Environmental Response, Compensation and Liability Act (“CERCLA”), 42 USC § 9601 et seq.
22 EPA sent additional GNLs in 2006, 2008 and 2011. DSL and ODOT each received a GNL on
23 February 16, 2011, and each is therefore a PRP.

24 20.

25 Under 42 USC § 9607(a), PRPs and other entities with operations, property interests, or
26 other involvement near the Willamette River may be held jointly and severally liable for all costs

1 incurred by EPA and other PRPs in responding to releases or threats of releases of hazardous
2 substances into the Portland Harbor.

3 21.

4 Under 42 USC § 9607(f)(1), PRPs and other entities with operations, property interests, or
5 other involvement near the Willamette River may be held jointly and severally liable for all costs
6 associated with the restoration of natural resources damaged by hazardous substances.

7 22.

8 On or about July 1, 2006, Arkema, Inc., Chevron U.S.A., Inc., Gunderson, Inc., NW
9 Natural, Time Oil Co., ConocoPhillips Company, Union Pacific Railroad Company, and Oregon
10 Steel Mills, Inc., among others, (collectively the “2006 Plaintiffs”) asserted claims against
11 ODOT, claiming a right to recovery of, or contribution toward, response costs incurred in
12 connection with the Portland Harbor under CERCLA, 42 USC § 9601 et seq., pursuant to an
13 Administrative Order on Consent between the 2006 Plaintiffs and EPA. In order to avoid
14 immediate prosecution of claims pursuant to EPA’s Administrative Order on Consent, ODOT
15 entered into tolling agreements with the 2006 Plaintiffs.

16 23.

17 On January 18, 2008, EPA issued CERCLA Section 104(e) (42 USC § 9604(e))
18 information requests to ODOT requesting information regarding releases into the Portland
19 Harbor between 1937 and the present. A Section 104(e) request is not permissive; recipients
20 must provide the information requested under threat of legal action and civil penalties of up to
21 \$32,500 per day for noncompliance. Shortly thereafter, six federally recognized tribes and other
22 government agencies (“NRD Trustees”) identified DSL and ODOT as PRPs for damage to
23 natural resources.

24 24.

25 On February 16, 2011, EPA identified ODOT as a PRP for releases into the Portland
26 Harbor and advised that ODOT was potentially responsible for all response costs incurred in the

1 Portland Harbor. ODOT has likewise been the subject of multiple other claims by PRPs and
 2 parties other than the 2006 Plaintiffs, who have been notified by EPA, tribal, federal, and state
 3 natural resource trustees or other parties of their potential liabilities with respect to the Portland
 4 Harbor. The limitations periods applicable to these contribution claims have been tolled by
 5 agreement. The claims referenced in the preceding four paragraphs are individually and
 6 collectively referred to as “the Portland Harbor Claims.”

7 25.

8 On or about October 30, 2015, the State filed a lawsuit against a number of insurers, *State*
 9 *of Oregon v. Pacific Indemnity Company, et al.*, Multnomah County Circuit Court Case No.
 10 15CV29585, in which the State sought a declaratory judgment that the insurance company
 11 defendants in that case have a duty to defend the State against the Portland Harbor Claims and
 12 also seeking damages for Defendant Insurers’ refusal to defend.

13 26.

14 On or about January 25, 2018, the State amended its Complaint to include Arrowood as a
 15 party defendant, along with the other insurance company defendants.

16 27.

17 On or about July 25, 2018, the Court declared that Arrowood has a duty to defend ODOT
 18 against the Portland Harbor Claims under the automobile coverage part of the policy issued by
 19 Arrowood.

20 CLAIM FOR DECLARATORY RELIEF

21 28.

22 Arrowood incorporates by reference, as if fully restated here, paragraphs 1 through 27
 23 above.

24 29.

25 Defendant Insurers, each of which issued to the State of Oregon and/or to ODOT an
 26 automobile liability insurance policy, or a policy that included automobile liability coverage,

1 owe their proportionate and fair share towards funding the defense of ODOT against the Portland
2 Harbor Claims under principles of equitable contribution. The Court should issue a declaration
3 that each of the Defendant Insurers should bear their respective share of the defense of ODOT
4 against the Portland Harbor claims based upon an equitable allocation.

5 30.

6 Arrowood requests that the Court further declare that each of the Defendant Insurers
7 owes an allocated share of the obligation to defend ODOT against the Portland Harbor Claims.

8 31.

9
10 **WHEREFORE**, Plaintiff Arrowood Indemnity Company prays for relief as follows:

11 1. A declaratory judgment that Defendant Insurers owe their fair, equitable and
12 respective share of contribution, along with Arrowood, toward, toward the defense of ODOT in
13 connection with the investigation and remediation expenses or any other claims associated with
14 the Portland Harbor Claims;

15 2. An award of Arrowood's costs and disbursements incurred herein; and

16 3. Any other and further award or relief that this court deems just and equitable.

17 Dated: December 17, 2018.

18 **NICHOLAS DAZER PC**

19 /s/ Nicholas L. Dazer

20 Nicholas L. Dazer, OSB No. 002403
21 Plaintiff's Trial Attorney
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